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January 2, 1997

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William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Gen. Docket 90-357, IB Docket 95-91

Dear Mr. Caton:

On December 31, 1996, the undersigned counsel for CD Radio Inc. (CD Radio) met with John Stern, of the International Bureau, to discuss the design of the upcoming satellite DARS auction. CD Radio argued that there is independent justification for adopting aspects of prior Commission rules developed in the PCS C and F Block auctions to prevent unjust enrichment as a result of the DARS auction. In particular, the Commission may wish to ensure that before or after any auction, DARS applicants cannot "sell their place in line" to another company. Failure to adopt such provisions would penalize those applicants that prosecuted their application with the intent of entering the satellite DARS business.

Although not all transfers of control should be prohibited, arrangements where an existing applicant merely sells a controlling stake to a single company - or an option or debt or non voting equity convertible to a controlling stake - amount to little more than speculation in license applications and frequency assignments. The Commission has never permitted such speculation in the past and should not do so here. Indeed, the agency has longstanding and more severe precedents prohibiting transfers of control or assignments of unbuilt facilities.

The Commission has substantial experience with policies designed to prevent such unjust enrichment in connection with its designated entity and small business auction rules. CD Radio believes that similar rules would be appropriately applied in this instance, and has attached an example. These proposed rules represent a straight-forward modification of the existing F-Block policies to fit the purpose at hand by eliminating all references to numerical small business eligibility criteria. The resulting rules facilitate legitimate financing efforts - including transferring large equity stakes in the post-auction licensees -- and yet serve the

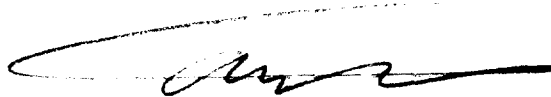
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public interest in forbidding speculation in licenses.

Should any questions arise concerning this letter, please contact the undersigned at (202) 429-7269.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carl R. Frank', with a long horizontal flourish extending to the right.

Carl R. Frank

cc: Michelle Farquhar, WTB
Kathleen O'Brien Ham, WTB
Amy Zoslov, WTB
Nancy Markowitz, WTB
Donald Gips, IB
John Stern, IB
Rosalee Chiara, IB
Gregory Rosston, OPP

XX.XXX Eligibility for DARS licenses.

(a) General Rule.

(1) No application is acceptable for filing and no license shall be granted for a DARS license, unless all persons or entities that hold interests in the applicant are existing investors. For purposes of this rule, an existing investor is defined as a person or entity that held an attributable interest in the applicant on December 31, 1996.

(2) Any licensee awarded a license pursuant to this section shall maintain its eligibility until at least five years from the date of initial license grant.

(b) Exceptions to General Rule.

(1) Publicly-Traded Corporations. Where an applicant (or licensee) is a publicly traded corporation with widely dispersed voting power, such a publicly-traded corporation shall be deemed to comply with paragraph (a) of this section.

(2) 25 Percent Equity Exception. The eligibility of a person or entity that holds an interest in the applicant (or licensee) as an existing investor shall not be considered so long as:

(i) Such person or entity, together with its affiliates, holds only nonattributable equity equaling no more than 25 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(4) of this section, such person or entity is not a member of the applicant's (or licensee's) control group; and

(iii) The applicant (or licensee) has a control group that complies with the minimum equity requirements of paragraph (b)(4) of this section, and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(3) 49.9 Percent Equity Exception. The eligibility of a person or entity that holds an interest in the applicant (or licensee) as an existing investor shall not be considered so long as:

(i) Such person or entity, together with its affiliates, holds only nonattributable equity equaling no more than 49.9 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(5) of this section, such person or entity is not a member of the applicant's (or licensee's) control group; and

(iii) The applicant (or licensee) has a control group that complies with the minimum equity requirements of paragraph (b)(5) of this section and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(4) Control Group Minimum 25 Percent Equity Requirement. In order to be eligible to exclude non-qualifying investments made by persons or entities identified in paragraph (b)(2) of this section, and applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) making the election provided in paragraph (b)(4)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) control group must own at least 25 percent of the applicant's (or licensee's) total equity as follows:

(A) At least 15 percent of the applicant's (or licensee's) total equity must be held by existing investors, either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such existing investors must hold 50.1 percent of the voting stock and all general partnership interests within the control group, and must have de facto control of the control group and of the applicant;

(C) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned, either unconditionally or in the form of stock options, by any of the following entities, which may not comply with paragraph (a) of this section:

(1) Institutional Investors; or

(2) Individuals that are members of the applicant's (or licensee's) management.

(D) Following termination of the three-year period specified in paragraph (b)(4)(i) of this section, existing investors must continue to own at least 10 percent of the applicant's (or licensee's) total equity, either unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(4)(i)(A) of this section. The restrictions specified in paragraph (b)(4)(i)(C)(1) through (2) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee), the 25 percent minimum equity requirements set forth in paragraph (b)(4)(i) of this section shall apply, except that only 10 percent of the applicant's (or licensee's) total equity must be held by existing investors and that the remaining 15 percent of the applicant's (or licensee's) total equity may be held by existing investors or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 15 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(4)(i) of this section.

(5) Control Group Minimum 50.1 Percent Equity Requirement. In order to be eligible to exclude nonqualifying investments made by persons or entities identified in paragraph (b)(3) of this section, an applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) making the election provided in paragraph (b)(5)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) control group must own at least 50.1 percent of the applicant's (or licensee's) total equity as follows:

(A) at least 30 percent of the applicant's (or licensee's) total equity must be held by existing investors, either unconditionally or in the form of options, exercisable at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such existing investors must hold 50.1 percent of the voting stock and all general partnership interests within the control group and must have de facto control of the control group and of the applicant;

(C) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by existing investors, either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(5)(i)(A) of this section, or by any of the following entities which may not comply with paragraph (a) of this section:

(1) Institutional investors, either unconditionally or in the form of stock options; or

(2) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options.

(D) Following termination of the three-year period specified in paragraph (b)(5)(i) of this section, existing investors must continue to own at least 20 percent of the applicant's (or licensee's) total equity unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(5)(i)(A) of this section. The restrictions specified in paragraph (b)(5)(i)(C)(1) through (2) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee), the 50.1 percent minimum equity requirements set forth in paragraph (b)(5)(i) of this section shall apply, except that only 20 percent of the applicant's (or licensee's) total equity must be held by existing investors, and that the remaining 30.1 percent of the applicant's (or licensee's) total equity may be held by existing investors or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 30.1 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(5)(i) of this section.

(6) Calculation of Certain Interests. Except as provided in paragraphs (b)(4) and (b)(5) of this section, ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may not be used to appear to terminate or divest ownership interests before they actually do so, in order to comply with the nonattributable equity requirements in paragraphs (b)(2)(i) and (b)(3)(i) of this section.

(7) Aggregation of Affiliate Interests. Persons or entities that hold interest in an applicant (or licensee) that are affiliates of each other or have an identify of interests identified in § 24.720(1)(3) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the nonattributable equity requirements in paragraphs (b)(2)(i) and (b)(3)(i) of this section.

(c) Short-Form and Long-Form Applications: Certifications and Disclosure.

(1) Short-form Application. In addition to certifications and disclosures required by ____ of this chapter, each applicant for a DARS license shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), and shall append the following information as an exhibit to its Form 175:

(i) For an applicant that is a publicly traded corporation with widely disbursed voting power:

(A) A certified statement that such applicant complies with the requirements of the definition of publicly traded corporation with widely disbursed voting power set forth in § 24.720(m); and,

(B) The identify of each affiliate of the applicant if not disclosed pursuant to § 24.813.

(ii) For all other applicants:

(A) The identity of each member of the applicant's control group, regardless of the size of each member's total interest in the applicant, and the percentage and type of interest held;

(B) The status of each control group member that is an institutional investor, an existing investor, and/or a member of the applicant's management;

(C) The identify of each affiliate of the applicant and each affiliate of individuals or entities identified pursuant to paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(C) of this section if not disclosed pursuant to ____;

(D) A list and summary of all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility for a license(s) for a DARS license under this section, including the establishment of de facto and de jure control; such agreements and instruments include articles

of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

(E) A list and summary of any investor protection agreements and identification specifically of any such provisions in those agreements identified pursuant to paragraph (c)(2)(ii) of this section, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(iii) for each applicant claiming status as a consortium, the information specified in paragraph (c)(1)(ii) of this section, for each member of such consortium.

(2) Records Maintenance. All applicants, including those that are winning bidders, shall maintain at their principal place of business an updated file of ownership information, including those documents referenced in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section and any other documents necessary to establish eligibility under this section. Licensees (and their successors in interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (Form 175), whichever is earlier.

(d) Audits.

(1) Applicants and licensees claiming eligibility under this section shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed DARS service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(e) Definitions. The terms affiliate, control group, institutional investor, nonattributable equity, preexisting entity, publicly traded corporation with widely dispersed voting power, and qualifying investor used in this section are defined in § 24.720.

24.709 Eligibility for licenses for frequency Blocks C and FXX.XXX Eligibility for DARS licenses.

(a) General Rule.

(1) No application is acceptable for filing and no license shall be granted for frequency block C or frequency block F, ~~unless the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, have gross revenues of less than \$ 125 million in each of the last two years and total assets of less than \$ 500 million at the time the applicant's short form application (Form 175) is filed~~ a DARS license, unless all persons or entities that hold interests in the applicant are existing investors. For purposes of this rule, an existing investor is defined as a person or entity that held an attributable interest in the applicant on December 31, 1996.

~~—(2) The gross revenues and total assets of the applicant (or licensee), and its affiliates, and (except as provided in paragraph (b) of this section) of persons or entities that hold interests in the applicant (or licensee), and their affiliates, shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for a license for frequency block C or frequency block F under this section.~~

~~(32) Any licensee awarded a license pursuant to this section (or pursuant to Section 24.839(d)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments (i.e., from sources whose gross revenues and total assets are not considered under paragraph (b) of this section), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered.~~

(b) Exceptions to General Rule.

~~(1) Small Business Consortia. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues and total assets of each small business shall not be aggregated.~~

~~—(2) Publicly-Traded Corporations. Where an applicant (or licensee) is a publicly traded corporation with widely dispersed voting power, the gross revenues and total assets of a person or entity that holds an interest in the applicant (or licensee), and its affiliates, shall not be considered~~ such a publicly-traded corporation shall be deemed to comply with paragraph (a) of this section.

(32) 25 Percent Equity Exception. The ~~gross revenues and total assets~~ eligibility of a person or entity that holds an interest in the applicant (or licensee), ~~and its affiliates,~~ as an existing investor shall not be considered so long as:

(i) Such person or entity, together with its affiliates, holds only nonattributable equity equaling no more than 25 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(~~54~~) of this section, such person or entity is not a member of the applicant's (or licensee's) control group; and

(iii) The applicant (or licensee) has a control group that complies with the minimum equity requirements of paragraph (b)(~~54~~) of this section, and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(~~43~~) 49.9 Percent Equity Exception. The ~~gross revenues and total assets~~eligibility of a person or entity that holds an interest in the applicant (or licensee), ~~and its affiliates, as an existing investor~~ shall not be considered so long as:

(i) Such person or entity, together with its affiliates, holds only nonattributable equity equaling no more than 49.9 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(~~65~~) of this section, such person or entity is not a member of the applicant's (or licensee's) control group; and

(iii) The applicant (or licensee) has a control group that complies with the minimum equity requirements of paragraph (b)(~~65~~) of this section and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(~~54~~) Control Group Minimum 25 Percent Equity Requirement. In order to be eligible to exclude ~~gross revenues and total assets of~~non-qualifying investments made by persons or entities identified in paragraph (b)(~~32~~) of this section, and applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) ~~whose sole control group member is a preexisting entity, as making the election~~ provided in paragraph (b)(~~54~~)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) control group must own at least 25 percent of the applicant's (or licensee's) total equity as follows:

(A) At least 15 percent of the applicant's (or licensee's) total equity must be held by qualify existing investors, either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such qualify existing investors must hold 50.1 percent of the voting stock and all general partnership interests within the control group, and must have de facto control of the control group and of the applicant;

(C) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned, either unconditionally or in the form of stock options, by any of the following entities, which may not comply with ~~Section 24.720(n)(1)~~ paragraph (a) of this section:

(1) Institutional Investors; or

(2) ~~Noncontrolling existing investors in any preexisting entity that is a member of the control group;~~

~~—(3) Individuals that are members of the applicant's (or licensee's) management; or~~

~~—(4) Qualifying investors, as specified in Section 24.720(n)(4).~~

(D) Following termination of the three-year period specified in paragraph (b)(~~54~~)(i) of this section, qualify existing investors must continue to own at least 10 percent of the applicant's (or licensee's) total equity, either unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(~~54~~)(i)(A) of this section. The restrictions specified in paragraph (b)(~~54~~)(i)(C)(1) ~~through (44)(i)(C)(1) through (2)~~ of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) ~~whose control group's sole member is a preexisting entity~~, the 25 percent minimum equity requirements set forth in paragraph (b)(~~54~~)(i) of this section shall apply, except that only 10 percent of the applicant's (or licensee's) total equity must be held by qualify existing investors and that the remaining 15 percent of the applicant's (or licensee's) total equity may be held by ~~qualifying investors or noncontrolling existing investors in such control group member~~ or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 15 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(~~54~~)(i) of this section.

(~~65~~) Control Group Minimum 50.1 Percent Equity Requirement. In order to be eligible to exclude ~~gross revenues and total assets of nonqualifying investments made by~~ persons or entities identified in paragraph (b)(~~43~~) of this section, an applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) ~~whose sole control group member is a preexisting entity~~, as making the election provided in paragraph (b)(~~65~~)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) control group must own at least 50.1 percent of the applicant's (or licensee's) total equity as follows:

(A) at least 30 percent of the applicant's (or licensee's) total equity must be held by qualify existing investors, either unconditionally or in the form of options, exercisable at the

option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such ~~qualify~~existing investors must hold 50.1 percent of the voting stock and all general partnership interests within the control group and must have de facto control of the control group and of the applicant;

(C) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by ~~qualify~~existing investors, either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(~~65~~)(i)(A) of this section, or by any of the following entities which may not comply with ~~Section paragraph (a) of 24.720(n)(1)~~this section:

(1) Institutional investors, either unconditionally or in the form of stock options; or

~~(2) Noncontrolling existing investors in any preexisting entity that is a member of the control group, either unconditionally or in the form of stock options;~~

~~— (32) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options; or~~

÷

~~— (4) Qualifying investors, as specified in 24.720(n)(4).~~

(D) Following termination of the three-year period specified in paragraph (b)(~~65~~)(i) of this section, ~~qualify~~existing investors must continue to own at least 20 percent of the applicant's (or licensee's) total equity unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(~~65~~)(i)(A) of this section. The restrictions specified in paragraph (b)(~~6~~)(i)(C)(1) ~~through (45)(i)(C)(1) through (2)~~ of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) ~~whose control group's sole member is a preexisting entity~~, the 50.1 percent minimum equity requirements set forth in paragraph (b)(~~65~~)(i) of this section shall apply, except that only 20 percent of the applicant's (or licensee's) total equity must be held by ~~qualifying~~existing investors, and that the remaining 30.1 percent of the applicant's (or licensee's) total equity may be held by ~~qualifying investors, or noncontrolling existing investors in such control group member~~ or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 30.1 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(~~65~~)(i) of this section.

(~~76~~) Calculation of Certain Interests. Except as provided in paragraphs (b)(4) and (b)(5) ~~and (b)(6)~~ of this section, ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may

not be used to appear to terminate or divest ownership interests before they actually do so, in order to comply with the nonattributable equity requirements in paragraphs (b)(3)(i) and ~~(b)(42)(i)~~ and (b)(3)(i) of this section.

(87) Aggregation of Affiliate Interests. Persons or entities that hold interest in an applicant (or licensee) that are affiliates of each other or have an identify of interests identified in ~~Section~~ § 24.720(1)(3) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the nonattributable equity requirements in paragraphs (b)(3)(i) and ~~(b)(4)(i)~~ of ~~this section.~~

2)(i) and (b)(3)(i) of this section.

~~— Example 1 for paragraph (b)(8). ABC Corp. is owned by individuals, A, B, and C, each having an equal one-third voting interest in ABC Corp. A and B together, with two-thirds of the stock have the power to control ABC Corp. and have an identity of interest. If A & B invest in DE Corp., a broadband PCS applicant for block C, A and B's separate interests in DE Corp. must be aggregated because A and B are to be treated as one person.~~

~~— Example 2 for paragraph (b)(8). ABC Corp. has subsidiary BC Corp., of which it holds a controlling 51 percent of the stock. If ABC Corp. and BC Corp., both invest in DE Corp., their separate interests in DE Corp. must be aggregated because ABC Corp. and BC Corp. are affiliates of each other.~~

(c) Short-Form and Long-Form Applications: Certifications and Disclosure.

(1) Short-form Application. In addition to certifications and disclosures required by ~~Part 1, subpart Q of this chapter and Section 24.813~~ of this chapter, each applicant for a DARS license for frequency block C or frequency block F shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), ~~and (if applicable) that it is eligible for designated entity status pursuant to this section and Section 24.720~~, and shall append the following information as an exhibit to its Form 175:

(i) For an applicant that is a publicly traded corporation with widely disbursed voting power:

(A) A certified statement that such applicant complies with the requirements of the definition of publicly traded corporation with widely disbursed voting power set forth in ~~Section 24.720(m);~~ § 24.720(m); and.

(B) The identify of each affiliate of the applicant if not disclosed pursuant to ~~Section 24.813;~~ and
§ 24.813.

~~—(C) The applicant's gross revenues and total assets, computed in accordance with paragraphs (a) and (b) of this section.~~

(ii) For all other applicants:

(A) The identity of each member of the applicant's control group, regardless of the size of each member's total interest in the applicant, and the percentage and type of interest held;

~~—(B) The citizenship and the gender or minority group classification for each member of the applicant's control group if the applicant is claiming status as a business owned by members of minority groups and/or women;~~

~~—(C) The status of each control group member that is an institutional investor, an existing investor, and/or a member of the applicant's management;~~

~~—(D) The identify of each affiliate of the applicant and each affiliate of individuals or entities identified pursuant to paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(C) of this section if not disclosed pursuant to Section 24.813; _____;~~

~~—(E) A certification that the applicant's sole control group member is a preexisting entity, if the applicant makes the election in either paragraph (b)(5)(ii) or (b)(6)(ii) of this section; and~~

~~—(F) The applicant's gross revenues and total assets, computed in accordance with paragraphs (a) and (b) of this section.~~

~~— (iii) for each applicant claiming status as a consortium, the information specified in paragraph (c)(1)(ii) of this section, for each member of such consortium.~~

~~—(2) Long form Application. In addition to the requirements in subpart I of this part and other applicable rules (e.g., Sections 20.6(c) and 20.9(b) of this chapter), each applicant submitting a long form application for a license(s) for frequency block C or frequency block F shall, in an exhibit to its long form application:~~

~~—(i) Disclose separately and in the aggregate the gross revenues and total assets, computed in accordance with paragraphs (a) and (b) of this section, for each of the following: the applicant; the applicant's affiliates; the applicant's control group members; the applicant's attributable investors; and affiliates of its attributable investors;~~

~~— (ii) List and summarize~~D) A list and summary of all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility for a license(s) for frequency block C or frequency block F and its eligibility under Sections 24.711, 24.712, 24.714 and 24.720a DARS license under this section, including the establishment of de facto and de jure control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing

agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

~~(iii) List and summarize~~ E) A list and summary of any investor protection agreements and identification specifically of any such provisions in those agreements identified pursuant to paragraph (c)(2)(ii) of this section, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(iii) for each applicant claiming status as a small business consortium, the information specified in paragraph (c)(1)(ii) of this section, for each member of such consortium.

~~(32)~~ Records Maintenance. All applicants, including those that are winning bidders, shall maintain at their principal place of business an updated file of ownership, ~~revenue and asset~~ information, including those documents referenced in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section and any other documents necessary to establish eligibility under this section ~~or under the definitions of small business and/or business owned by members of minority groups and/or women.~~ Licensees (and their successors in interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (Form 175), whichever is earlier.

(d) Audits.

(1) Applicants and licensees claiming eligibility under this section ~~or Sections 24.711 through 24.720~~ shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed ~~broadband~~ PCDARS service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(e) Definitions. The terms affiliate, ~~business owned by members of minority groups and women, consortium of small businesses,~~ control group, ~~existing investor, gross revenues,~~ institutional investor, ~~members of minority groups,~~ nonattributable equity, preexisting entity, publicly traded corporation with widely dispersed voting power, and qualifying investor, ~~small business and total assets~~ used in this section are defined in Section § 24.720.